

\*\*E-Filed 6/27/06\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HUAFENG WEI,

Plaintiff,

v.

MICHAEL CHERTOFF, et al.,

Defendants.

Case Number C 06-03739 JF

ORDER<sup>1</sup> TO SHOW CAUSE

[re: docket no. 1]

On June 12, 2006, Plaintiff Hafeng Wei filed a “Petition for Hearing on Naturalization Application Under 8 U.S.C. §1447 (B)” against Defendants Michael Chertoff, Secretary of the Department of Homeland Security; Emilio T. Gonzalez, Director of the United States Citizenship and Immigration Services (“CIS”); Francis D. Siciliano, Officer-in-Charge of the San Jose Sub Office of CIS; and Robert Mueller, Director of the Federal Bureau of Investigation (“FBI”).

Plaintiff alleges the following. He is a lawful permanent resident of the United States. On April 8, 2005, he applied for naturalization to the United States. He was interviewed on

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<sup>1</sup> This disposition is not designated for publication and may not be cited.

1 September 16, 2005. He has been informed that he passed the test, but that no decision can be  
2 made because the FBI name check has not yet been completed.

3 Plaintiff alleges that Defendants have violated 8 U.S.C. § 1447(b), which provides:

4 If there is a failure to make a determination under section 1446 of this title before  
5 the end of the 120-day period after the date on which the examination is  
6 conducted under such section, the applicant may apply to the United States district  
7 court for the district in which the applicant resides for a hearing on the matter.  
Such court has jurisdiction over the matter and may either determine the matter or  
remand the matter, with appropriate instructions, to the Service to determine the  
matter.

8 Plaintiff requests that this Court adjudicate the naturalization application or issue an order  
9 directing Defendants to adjudicate his application immediately. Plaintiff also requests reasonable  
10 attorney's fees pursuant to the Equal Access to Justice Act. Good cause therefore appearing, IT  
11 IS HEREBY ORDERED as follows:

12 (1) The Clerk of the Court shall serve by certified mail a copy of the petition and a  
13 copy of this Order upon counsel for Defendants, the Office of the United States Attorney. The  
14 Clerk of the Court also shall serve a copy of this Order upon Plaintiff's counsel, Justin X. Wang.

15 (2) Defendants shall, within sixty (60) days after receiving service of the petition, file  
16 and serve upon Plaintiff an answer, showing cause why the relief prayed for should not be  
17 granted. At the time the answer is filed, Defendants shall lodge with the Court all records  
18 relevant to a determination of the issues presented by the complaint. If Defendants contend that  
19 Plaintiff has failed to exhaust administrative remedies as to any ground for relief asserted in the  
20 complaint, Defendants shall specify what administrative remedy remains available to Plaintiff. If  
21 Defendants waive or concede the issue of exhaustion, Defendants shall so state in their answer.

22 (3) Plaintiff may file a response to the matters raised in the answer within thirty (30)  
23 days after receiving the answer.

24 (4) Unless otherwise ordered by the Court, the matter will be deemed submitted upon  
25 the filing of the response or upon the expiration of time to file a response.

26 (5) The Order Setting Initial Case Management Conference and ADR deadlines  
27 entered on June 12, 2006 in this action is hereby VACATED.

1 DATED: June 27, 2006

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JEREMY FOGEL  
United States District Judge

1 This Order has been served upon the following persons:

2 Justin X. Wang lawbw@aol.com

3 Office of the United States Attorney  
150 Almaden Blvd., Suite 900  
4 San Jose, CA 95113